# Los Angeles County Public Defender's Office

**July 2002, Expanded Staff Meeting**

The July 11, 2002 Expanded Staff Meeting was chaired by Public Defender Michael P. Judge. The following were among the topics discussed.

I. Announcements - Michael P. Judge: 30 Year Service Awards - Mr. Judge congratulated Administrative Services Manager Marilyn Turner and Investigator Lieutenant Robert Gil for completing 30 years of County service. To commemorate this milestone, Mr. Judge presented each with a pen and pencil set. 25 Year Service Awards - Head Deputy Laura Green and Division Chief Ronald Yorizane were congratulated for completing 25 years of County service. As a token of appreciation, each was presented with a County seal paperweight.

II. Administrative Deputy Penny Van Boagert's Transfer: Judge announced that effective August 1, 2002, Administrative Deputy Penny Van Bogaert would transfer to the Department of Children Support Services. Mr. Judge expressed his appreciation for her eight years of dedicated service to the Department and wished her the very best in her new assignment. A flyer was distributed announcing Ms. Van Bogaert's farewell luncheon on July 25 at the Tam-O-Shanter, 2980 Los Feliz Blvd., L.A. starting at noon. Questions concerning the luncheon as well as a menu selection should be addressed to Wendy Edmisten, at the Clara Shortridge Foltz Criminal Justice Center, or by calling her at (213) 974-3081.

Ms. Van Bogaert stated that she will miss the Department and the people very much, however, the offer she received from the Department of Child Support Services was simply too good to refuse, i.e., they were able to offer her a higher level position that does not exist in the Public Defender's office due to the Public Defender having fewer employees than her new Department.

Mr. Judge commented that in order to gain upper mobility, other employees may find it necessary to migrate to a larger department. Mr. Judge stated that this is something he has discussed with the County Human Resources Management as it has caused many vacancies to occur within the Department, particularly in administrative and Human Resources positions, and presents a particular challenge for all smaller departments.

III. Closed Three Strikes Cases - Lon Sarnoff: In February of this year, Mr. Sarnoff distributed a list of Three Strike cases that were at least six months old and not closed out on the DMS Strike Screen. He recently received an update from the current strikes database and discovered that many cases originally on the list back in February were still not properly closed out. Mr. Sarnoff stated that he met with one of the data entry people in Central and discovered that cases which were conflicts and/or private counsel cases were routinely not being closed out. It is crucial that these cases be closed (including closed as conflicts) in both the DMS and Strike Screen. The strike database is the only tool we have for managing the determination regarding which cases might be ruled as cruel and unusual punishment as a result of the Andrade case, now pending before the U.S. Supreme Court.

IV. EDP - United States v. Ruiz - Michael P. Judge: Mr. Judge discussed United States v. Ruiz, wherein the defendant was offered an early disposition, with the understanding that there would be a break on sentencing (a downward departure fo two levels), if there was an immediate entry of a plea. However, in order to accomplish this, the U.S. Attorney required that the defendant waive certain Brady disclosure rights as to evidence that would be relevant to affirmative defenses and impeachment of prosecution witnesses. In this case, the defendant had turned down the original offer, but later decided to enter a guilty plea and requested that the earlier offer be approved. The U.S. Attorney objected and the Court ultimately refused the downward departure previously offered. The Ninth Circuit Court sided with the defendant, Ruiz.

The U.S. Supreme Court unanimously overruled the decision of the Ninth Circuit Court and held that at that stage of the proceedings, a defendant is not entitled to certain Brady discovery rights. Those Brady discovery rights that would provide evidence for the purpose of impeachment or to support an affirmative defense, are viewed by the Supreme Court as applying at the trial stage and not at the early guilty plea juncture.

Mr. Judge cautioned that there is a variety of evidence that could result in a defendant's total exoneration and yet are under the title of affirmative defenses. Nevertheless, Ruiz suggests that a person is not entitled to such evidence under Brady, if entering a guilty plea early on.

Mr. Judge has requested that PIAS and Appellate provide written analyses to determine our best course should we become involved in a disposition. In the meantime, attorneys should be careful when entering into any sort of plea negotiations to ensure that there is something placed on the record that protects the client and the department, if subsequently Brady material is discovered. In the initial batch of cases arising out of the Rampart Scandal, a number of the cases involving certain officers were overturned. Although the office tried these cases at the rate of approximately 25% to 30% vs. the historical felony jury trial rate of approximately 5%, we still pled close to 70% of the individuals guilty to some charge. By pleading these individuals guilty, we may be prevented from later challenging a wrongful conviction on the basis that we were not entitled to evidence of an affirmative defense or impeachment at that stage of the proceedings. This creates a very significant problem for the Department and our clients.

Mr. Judge reiterated the Department's philosophy concerning the Felony Early Disposition Program: Our Office conceptually supports EDP, but does not support entering into dispositions solely to support the program or to retain allocated staff. We enter into dispositions only when it is in the best interest of an individual client to do so. We represent each individual client, and may not properly disadvantage individual clients, by refusing to negotiate at an early stage, with the goal that others may possibly later somehow randomly benefit as a result of a large number of cases accumulating in the pending trial status. If a case requires further factual investigation, legal research, expert advice, or additional discovery before plea, the matter should be continued for that purpose or set for preliminary hearing. The best interest of each individual client must come first.

V. Pitchess Reporting Forms - Michael P. Judge/Carole Telfer: Mr. Judge reported that for reasons unknown to him, it appears either that attorneys are not making Pitchess Motions or the motions they are filing are not being reliably reported to PIAS, utilizing the designated Pitchess Reporting form. Acting Head Deputy Carole Telfer stated that PIAS requires the information to ensure that discovery is received and is complete and that it can be shared, (consistent with any applicable protective order), within the office and used for the benefit of our clients. The District Attorney's Office has advised our office that they recognize no general Brady Notice, only case specific Brady Notice, which they believe allows them to decide which of the specific cases they will provide to PIAS.

It is imperative that PIAS be informed when a "d" Protective Order is received, as it purports to prohibit the requested information from being shared within the office or to be used on other cases.

Mr. Judge stated that due to the Ruiz ruling, the PIAS database may be the only realistic source of information about affirmative defenses and impeaching evidence, especially early in the proceedings. Additionally, there have been inconsistencies in Pitchess disclosure involving the same officers with the same character traits during the same period of time. Mr. Judge pointed out that, in some instances, lawyers have used other resources to obtain information for impeachment and/or affirmative defenses. These resources have included using the civil index, and contacting civil lawyers who have filed lawsuits against these officers, etc.

VI. LASD IRC Bail Acceptance Policy - Lon Sarnoff: The Sheriff has closed the Lynwood Jail, which has approximately 1800 beds, and the Biscailuz Center, which has approximately 200 beds due to budget shortages. There now is a shortage of jail beds due to the number of inmates who are classified as "keep-a-ways". There are 14 to 15 different categories of inmates who can't be housed in the same unit. To deal with this problem, the Sheriff has decided to release individuals from jail who are charged only with misdemeanors and whose aggregate bail is $25,000 or less. Exceptions to the Sheriff's policy are people charged with failure to appear on a written promise to appear, contempts, spousal battery, sex crimes involving a minor, escape, threats to public officials, false bomb reports, battery on a juror and possession of a gun in a public building. Approximately 8 years ago, former Sheriff Sherman Block initiated a similar program, releasing inmates whose bail was set at $5,000 or less. However, judges, attempting to override his decision, began setting bail at $7,500 and then continued to raise bail as the Sheriff raised the threshold amount, eventually ending at $28,000. Consequently, the bail inflation caused more people to be held in custody and, those who could have posted a $5,000 bail, were now facing bail set at $28,000 due to the artificial inflation.

Recently, Mr. Sarnoff attended a meeting called by Criminal Supervising Judge Oki, in which the concerns of the Court and the District Attorney were discussed as to this policy. At this meeting, Mr. Sarnoff spoke with Judge Oki regarding bail inflation and Judge Oki agreed that it is inappropriate for judges to do so. Judge Oki requested that he be advised of any such instance.

Mr. Sarnoff stated that attorneys who encounter a bail setting of $25,000 or more, when such bail setting is clearly beyond the normal, are to run motions to reduce the bail and to contact John

Scott in Appellate. There is a presumption that a misdemeanant is entitled to OR release. In order to set bail, a judge must make a finding as to why the bail is necessary to ensure the appearance of the defendant. John Scott will be preparing a list of topics related to bail and these topics will be discussed at a Department Wednesday Night Training session soon to be announced.

VII. Lexis/WestLaw Training - Long Sarnoff: Training began on July 10th and was well received. From those who attended, the majority felt that the training was appropriate and they were able to obtain valuable information. More advanced programs will be scheduled later in the year. There are three sessions remaining in the pilot program, however, Mr. Sarnoff is hopeful that Lexis/WestLaw will see the benefits obtained from the training and continue to provide staff for additional training sessions.

VIII. Pagers - Penny Van Bogaert: Ms. Van Bogaert announced that staff who have an older pager may turn it in to Pat Alexander for a newer model. Ms. Alexander can be reached at (213) 974-28925.

IX. Eleanor Zamora's Retirement - Bernice Hernandez: Legal Office Support Assistant II Eleanor Zamora will be retiring from the office with over 30 years of County service. To honor her, a dinner has been scheduled for Friday, August 2, 2002 at "El Paseo Inn" at historic Olvera Street in downtown L.A.. A flyer announcing the party was distributed.

X. Spanish Interpreters - John Gonzales: As of July 8, 2002, the Department has two Spanish language interpreters to assist clients and staff. Ms. Luisa Florian is located in the CSFCJC and can be reached at (213) 974-2960. Ms. Barbara Lichtenstein is located at Bauchet Street and can be reached at (213) 974-2897.

The August meeting was subsequently canceled. The next scheduled meeting will be on September 12, 2002 at 2:00 p.m. on the 19th Floor of the CSFCJC.